

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

CHE PEAK,

Plaintiff,

v.

ADVANCE STORES COMPANY,
INCORPORATED,

Defendant.

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Case No.: _____

**NOTICE OF AND PETITION FOR
REMOVAL**

Defendant Advance Stores Company, Incorporated d/b/a Advance Auto Parts (“Defendant” or “Advance”), by counsel, hereby files and serves this Notice of and Petition for Removal, to remove this action from the District Court of Douglas County, Nebraska, to this Court, pursuant to 28 U.S.C. §§ 1441 and 1446. In support of this removal, Defendant states as follows:

BACKGROUND

1. On April 6, 2016, Plaintiff Che Peak (“Plaintiff”) commenced this action in the District Court of Douglas County, Nebraska by filing a complaint, Case No. CI 16-2875 (the “State Court Action”). A true and accurate copy of the State Court Action is attached as Exhibit A in accordance with 28 U.S.C. § 1446(a).

TIMELY REMOVAL

2. On April 25, 2016, Plaintiff served Defendant with a copy of the Complaint. Defendant has not filed any pleadings in the State Court Action, and the time period under 28 U.S.C. §1446(b) for Defendant to file this Notice of Removal has not expired.

REMOVAL BASED ON FEDERAL QUESTION JURISDICTION

3. This action is being removed on the basis of federal question jurisdiction and the ground that this Court has original jurisdiction over the claim. *See* 42 U.S.C. §§ 2000e & 12101, *et seq.*; 28 U.S.C § 1331. Pursuant to 28 U.S.C. 1367(a), if a civil action includes a claim arising under federal law and a claim arising under state law, the district court shall have jurisdiction over all the claims so related as to form part of the same case or controversy.

5. In the Complaint, Plaintiff seeks damages for Defendant's alleged violation of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Family and Medical Leave Act, and the Nebraska Wage Payment and Collection Act. Plaintiff's case presents a question of federal law. Therefore, this court has original jurisdiction over the matter and removal is proper under the federal question jurisdiction of this court. 28 U.S. Code §§ 1331 & 1367(a).

VENUE

6. Pursuant to 28 U.S.C. § 1391(b) venue is proper in the United States District Court for the District of Nebraska in Omaha, Nebraska, because the United States District Court for the District of Nebraska in Omaha encompasses Douglas County, Nebraska.

7. Defendant shall give written notice of this removal to Plaintiff and will file an appropriate Notice of Filing Notice of Removal with the District Court of Douglas County, Nebraska, as required by 28 U.S.C. §1446(d).

8. No admission of fact, law, or liability is intended by this Notice of Removal, and Defendant expressly preserves any and all of its defenses, denials, and/or objections.

WHEREFORE, Defendant removes the State Court Action from the District Court of Douglas County, Nebraska to this Court, so that all further proceedings in this action be held before this Court.

DATED this 25th day of May, 2016.

Respectfully submitted,

ADVANCE STORES COMPANY,
INCORPORATED d/b/a ADVANCE AUTO
PARTS, Defendant.

/s/ Kenneth M. Wentz III
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Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which sent notification of such filing to the following:

Jennifer Turco Meyer
Dyer Law, P.C., LLO
10730 Pacific Street, #111
Omaha, Nebraska 68114

/s/ Kenneth M. Wentz III